

Congress of the United States

Washington, DC 20515

October 9, 2003

The Honorable Timothy J. Muris
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mr. Chairman:

On September 2, 2003, the pharmaceutical benefit managers Caremark RX, Incorporated, and Advance PCS announced their intent to merge, creating a company providing about 600 million prescriptions to an estimated 45 million people. This proposed merger will consolidate two of the nation's four largest publicly traded PBMs.

We are writing to request that before this merger is approved, the FTC thoroughly investigate its potential impact on competition in the prescription drug market.

Effective FTC oversight is critical to ensuring a competitive pharmaceutical market. This is particularly true with regard to pharmacy benefit management (PBM) companies, which serve as middlemen between drug manufacturers and the 200 million Americans who receive drug coverage from their health insurer.

In recent years, PBMs have been accused of a number of illegal and/or anticompetitive practices. Most prominently, numerous large PBMs have been accused of increasing costs for consumers and health plans by steering consumers towards more expensive drugs in exchange for large payments from drug manufacturers.¹ In fact, the four largest PBMs — Caremark, Medco, AdvancePCS, and Express Scripts — have all been accused of violating their fiduciary duty to their patients by favoring more expensive drugs.² In early 2003, Medco reached a \$42.5 million settlement in a civil case regarding these allegations. Medco has also been accused by the U.S. Attorney's office of destroying mail order prescriptions, changing prescriptions based on false or misleading information provided to treating physicians, and failing to comply with state laws regarding the review of drugs for harmful interaction.³

In a separate case, pharmacists have filed a class action lawsuit against Medco and AdvancePCS, the two largest PBMs, alleging that these PBMs have illegally reduced competition by failing to pay adequate reimbursement rates to pharmacies, artificially depressing prices paid to pharmacies for generic drugs, and otherwise restricting payments to pharmacies or

¹ *U.S. Accuses Merck of Cheating Health Plan*, New York Times (June 24, 2003).

² *Documents Detail Big Payments by Drug Makers to Sway Sales*, New York Times (Mar. 13, 2003).

³ *U.S. Accuses Merck of Cheating Health Plan*, *supra* note 1.

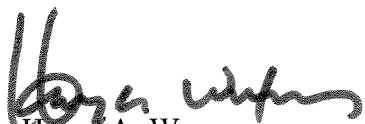
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their or ability to fill prescriptions in order to favor the mail-order pharmacies operated by the PBMs.⁴

While many of these allegations have yet to be resolved in court, they raise significant concerns that reducing competition in the PBM industry could have adverse impacts on consumers. As one PBM executive acknowledged, PBMs "are held accountable through the collective bidding process."⁵ Reducing the competition in this bidding process could result in dramatically higher drug costs for consumers.

Given these concerns, we urge you to review closely the proposed merger of Caremark and AdvancePCS.

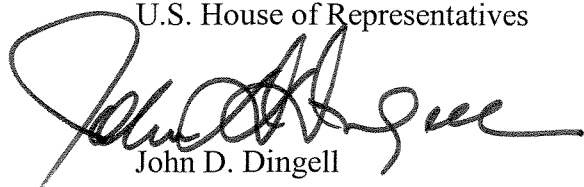
Sincerely,



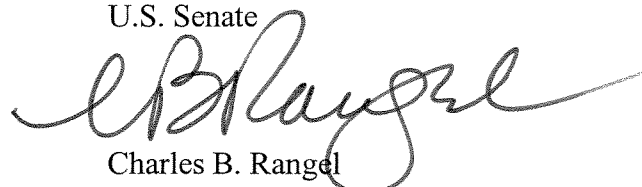
Henry A. Waxman
Member
U.S. House of Representatives



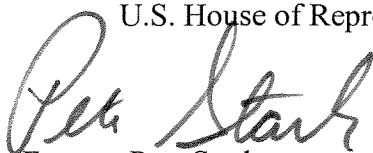
Mark Pryor
Senator
U.S. Senate



John D. Dingell
Member
U.S. House of Representatives



Charles B. Rangel
Member
U.S. House of Representatives



Fortney Pete Stark
Member
U.S. House of Representatives



Sherrod Brown
Member
U.S. House of Representatives



Thomas H. Allen
Member
U.S. House of
Representatives

⁴ *Pharmacy Groups Sue Two Biggest Prescription Managers*, Associated Press (Aug. 15, 2003).

⁵ *Drug Middlemen Are Facing Pressure over Rising Prices*, New York Times (Jan. 5, 2002) (quoting David Halbert, Chairman, AdvancePCS).